SOME OBSERVATIONS ON A BILL ENTITULED,

An Act for Indemnifying such Persons as shall upon Examination make Discoveries touching the Disposition of Publick Money, or concerning the Disposition of Offices, or any Payments or Agreements in Respect thereof; or concerning other Matters relating to the Conduct of Robert *Earl of* Orford.

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SOME

OBSERVATIONS

On a BILL Entituled

An Act for Indemnifying ſuch Perſons &c.

THE following Obſervations have no Relation to the Conduct of the Earl of *O*——; he is not accountable for the bringing the Bill into one Houſe, nor for rejecting it in the other: One would hope therefore, that the Merits of the Bill may be tried by the Reaſons of Juſtice and Equity, without having the Paſſions and Prejudices of the Times thrown into the Scale on either Side.

It will be hardly poſſible indeed in the Examination of the Reaſons of the Bill, to avoid taking Notice of ſome Circumſtances in the Earl of *O*—'s Caſe, becauſe the Circumſtances of his Caſe are made Uſe of to juſtify the Bill; it being evident that extraordinary Circumſtances were neceſſary to countenance and ſupport ſo very extraordinary a Proceeding; but ſuch Circumſtances ſhall be conſide-

red, merely as they relate to the Method of Proceeding, intended to be introduced by this Bill, and not as they tend to accuſe or excuſe the Conduct of the Earl of *O*——.

This Bill may properly fall under theſe Conſiderations.

1. Whether the Method of Proceeding, introduced by the Bill, be agreeable to the Notions of Juſtice in general, and to the Temper and Genius of the Law of *England* in particular.

2. Whether the particular Circumſtances of the Caſe to which it is applied, were ſufficient to juſtify ſo extraordinary a Proceeding.

3. Whether the Houſe of Lords, conſiſtently with their own Honour and Dignity, and the great Truſt repoſed in them by the Conſtitution, as Part of the Legiſlature, and as the Supreme Court of Judicature, could give their Conſent to this Bill.

4. Whether this Bill is juſtified by the Precedents which were alledged in Favour of it.

There are ſome Obſervations relating to the Bill, and ſome particular Proviſions therein, which muſt hereafter be taken Notice of, in conſidering the Points above ſtated: It may therefore be not improper to place them here under one View. And,

1. There is an Enquiry after one by Name as a guilty Perſon, and a new Law propoſed on Purpoſe to detect his Guilt; but there is no *Conſtat* of any Crime at all committed, or of any Injury to the Publick. It is ſaid indeed, to be neceſſary to examine ſeveral Perſons in relation to the Miſapplication, illegal or corrupt Diſpoſition of Money, *&c.* but no ſuch Miſapplications or corrupt Diſpoſitions are charged.

2. Much

2. Much leſs does the Bill charge any Crime whatſoever on Lord *O*——.

3. And yet the Enquiry is not carried on in Behalf of the Publick, to diſcover Frauds and Miſmanagements by whomſoever committed; but it is pointed ſingly againſt the Earl of *O*——, againſt whom no Charge is brought.

4. The Witneſſes, under this Bill, are not indemnified againſt Crimes which they may confeſs in the Courſe of their Diſcovery; unleſs thoſe Crimes affect the Conduct of Lord *O*——, and are relative thereto.

5. The Diſcovery (by the Words of the Bill) *may be to either Houſe of Parliament, or to a Committee of either Houſe*—probably it would have been to a Committee of the Houſe of Commons, before which only the Enquiry was depending.

6. If any Perſon gives falſe Evidence, or makes a falſe Diſcovery, he forfeits the Indemnity; and is ſubject to a Proſecution for the Crimes he confeſſes.

Having made theſe general Obſervations, the firſt Point to be conſidered, is,

1. Whether the Method of Proceeding, introduced by this Bill, be agreeable to the Notions of Juſtice, and to the Temper and Genius of the Law of *England* in particular.

It it without Doubt the Intereſt of the Publick to have Criminals puniſhed, and if this Method is agreeable to natural Juſtice, it ought to be eſtabliſhed by a general Law, and applied to all Caſes. How comes it then to paſs, that no wiſe Government has ever made Uſe of this Method againſt Criminals in General?

When Crimes are committed, or Injuries done to the Publick, all Governments have thought it their

their Buſineſs to detect and puniſh the Guilty. But to enquire after Criminals, when no Crime appears, is inconſiſtent not only with the Rules of Juſtice, but the Principles and Maxims of true Policy. Such a Method would diſturb the Peace of the World: Every Man would be ſuſpecting, and ſuſpected of all about him; fearful, not for Crimes committed, but Crimes, which the Iniquity of others, tempted by the Hopes of Reward or Impunity, might lay to his Charge; and the Law, inſtead of being a Protector to the Innocent, would become an Inſtrument in the Hands of the worſt Men, to harraſs and torment the beſt.

The Weight of theſe Reaſons has introduced a general Rule, that there muſt be a Certainty of a Crime committed, before a Criminal is ſought for. Was a general Indemnity to be proclaimed to all Men upon the Terms of this Bill, who would turn Informers and Accuſers, the World would ſwarm with *Empſons* and *Dudleys*; Courts of Juſtice would become mere Courts of Inquiſitions; Mens Lives and Fortunes would be ſubjected to the Evidence of Criminals, tempted by a Promiſe of Indemnity; and under ſuch a general Corruption of Evidence, of all Corruptions the worſt, what Juſtice could ever be expected?

There wants, I think, no other Proof of the Senſe of Mankind in a Caſe of this Nature, than the general Deteſtation ſhewn in all Times and in all Places againſt thoſe, who for Hire of any Sort become Informers. An Act of Parliament may exempt ſuch Witneſſes from Puniſhment, but from Infamy it cannot ſave them.

2. With reſpect to our own Conſtitution; nothing can be more contrary to the Spirit and Genius of the Law of *England*, than a Proceeding of this Nature.

Lord

Lord Chief Juſtice * *Hale* ſays, a Man may be arreſted and held in Cuſtody upon a Suſpicion of Felony; he may be arreſted by a private Perſon, or by an Officer of Juſtice; but to warrant the taking him, three Things are required.

1. "There muſt be in Fact a Felony committed by ſome Perſon; for where no Felony, "there can be no Ground of Suſpicion.

2. "The Party (if a private Perſon) that arreſts, muſt ſuſpect B. (*i. e.* the Perſon arreſted) "to be the Felon.

3. "He muſt have reaſonable Cauſes of ſuch Suſpicion, and thoſe muſt be alledged and proved.

What is ſaid here in caſe of an Arreſt by a private Perſon, is equally true, when the Arreſt is by an Officer, acting *Virtute Officii.*

A Conſtable may arreſt a Perſon ſuſpected of Felony; but he muſt examine the Circumſtances and Cauſes of the Suſpicion; he muſt be ſure that a Felony was committed, and, to juſtify the Arreſt and Impriſonment, he muſt aver in his Plea, that a *Felony was committed*; and this Fact is iſſuable, that is, the Perſon arreſted may deny that a Felony was committed, and if the Jury find no Felony committed, the Conſtable ſhall be puniſhed for a falſe Impriſonment.

Mr. Serjeant † *Hawkins* in his Pleas of the Crown, ſays, "A Juſtice of the Peace, who grants a "Warrant to arreſt on Suſpicion of Felony, "*where no Felony is committed*, or without probable Grounds of Suſpicion, is puniſhable, not "only at the Suit of the King, but of the Party "grieved.

I will give but one Inſtance more.

The Law of *England* ſhews no greater Regard to any thing than to the Life of a Man; and there

* Hiſt. P. Cor. Vol. II. p. 78. † Vol. II. p. 84.

there is an Officer or Officers appointed in every County, whoſe proper and principal Buſineſs it is, to take Inqueſt touching the Death of Man. But 'till a Man is *actually killed*, thoſe Officers have no Power to enquire. Their Inqueſt muſt be *ſuper viſum Corporis*, * and, if taken in any other Manner, it is void; if there is no dead Body to view, there can be no Inqueſt for Murder.

From theſe and many other Inſtances that might be given, it appears how careful the Law of *England* is, not only of the Lives and Fortunes of the Subject, but even of their Credit and Reputation, that they be not attacked and injured upon ill-grounded Surmiſes and Suſpicions. The Law will permit no Man to be put to anſwer merely becauſe another ſuſpects him, but requires undeniable Evidence that the Crime charged was actually committed by ſomebody: It requires Proof likewiſe, that there are probable and reaſonable Grounds to ſuſpect the Perſon accuſed. Happy is it for us that our Liberties are ſo well protected; for what ſtrange Work would it make, if our Fortunes and Reputations were to be put in Danger, whenever others, either wantonly or maliciouſly ſpread Suſpicions againſt us.

The Method of Proceeding, introduced by the Bill, is liable to another Objection, which will be beſt underſtood by conſidering, *firſt*, what Rights of Defence are allowed to Perſons under Accuſation by common Juſtice, and the Law of this Country.

Every Perſon accuſed is conſidered, in the Eye of the Law, as innocent till convicted; and is intitled to the Protection and Aſſiſtance of the Law, in the Defence of his Life, Liberty, Fortune or Reputation; and it would be a manifeſt Injuſtice in

* V. *Coke*, *Hale* and *Hawkins* on the Office of a Coroner.

in any Court to deny him any Advantage or Right that the Laws of his Country allow him.

Now, by the Law of all Nations, Witneſſes ought to be impartial, diſintereſted, unbiaſſed by Threats or Promiſes; and it is a juſt Exception to any Witneſs, if he wants any of theſe Qualifications.

By the Law of *England* every Perſon, put upon his Tryal, may have many legal Exceptions to the Witneſſes. The Court, by whom he is to be tryed, is Council for the Priſoner, to ſee that he has the full Benefit of all the Advantages which the Law gives him. And it is a good Exception to a Witneſs, that his Intereſt is any Ways concerned.

" In all * Caſes whatſoever, it is a good Exception againſt a Witneſs, that he is either to be a " Gainer or Loſer by the Event of the Cauſe, " whether ſuch Advantage be direct and immediate, or conſequential only.

" Lord Chief Juſtice † *Hale* ſpeaks to the ſame " Purpoſe: Some are diſabled to be Witneſſes in " reſpect that they are concern'd in Intereſt.

In Criminal Caſes it muſt be admitted, that Accomplices are ſometimes admitted to be Witneſſes; as if a Man confeſſes a Felony freely, he may be ſworn an Evidence againſt others concerned with him. But the Queſtion is, (with reſpect to the preſent Caſe) how far a Man is diſabled, if he comes in as an Evidence upon a *Promiſe of Pardon.*

To judge rightly of the Law in this Point, it muſt be conſider'd, that there are two Sorts of Objections againſt Witneſſes.

* *Hawkins*, Pl. Cor. Vol. II. p. 433. † Hiſt. Pl. Cor. Vol. I. p. 302 Vol. II. p. 279.

1. To their Competency.
2. To their Credibility.

The firſt Sort of Objections utterly diſables them from giving any Evidence at all.

The ſecond Sort does not exclude them from giving Evidence, but does greatly weaken, and utterly deſtroy the Credibility of their Teſtimony.

Of Objections to the Competency, the Court is Judge; and if the Objections are proper, the Court will not hear the Witneſſes. If the Objections are againſt the Credibility only, the Court will hear the Evidence, and then the Court or the Jury will judge what Credit is to be given to it.

There has been a Variety of Opinions, whether a Promiſe of Pardon to induce a Man to give Evidence againſt another, is an Objection to his *Competency* or not: But it was never doubted but that it is a very material Objection to his *Credibility*.

" Lord Chief Juſtice * *Hale* was conſtantly and " uniformly of Opinion, that the Objection is to " the *Competency*. I will give you his own Words: " If a Reward be promiſed to a Perſon for giv- " ing his Evidence before he gives it; this, if " proved, diſables his Teſtimony; and ſo, for " my own Part, I have always thought that if a " Perſon have a *Promiſe* of a *Pardon*, if he gives " Evidence againſt one of his Confederates, this " diſables his Teſtimony, if it be proved upon " him.

He was of the ſame Opinion in 1662, on the Tryal of ſome Perſons for Treaſon, for conſpiring the King's Death: His Words are;

" † The King having promiſed a Pardon to " RIGGS, if he would diſcover the Plot, he per- " formed that Part by his Diſcovery; and this " was

* Hiſt. Pl. Coron. Vol. II. p. 280. † Hiſt. Pl. Coron. Vol. I. p. 304.

" was held by all no Impediment to his Testi-
" mony, for the Promise was not apply'd to *wit-*
" *nessing against any other*. But † two *Justices* held,
" that if the King promised a Pardon, upon Con-
" dition that he would witness against any others;
" and that being acknowledged by *Riggs*, when
" he took upon him to give Evidence, *&c.* that
" will make him uncapable to give Evidence, be-
" cause he swears for himself; but in this Point,
" the greater Number of the Judges were of a con-
" trary Opinion.

You see he makes a Difference between discovering the Plot in general upon Promise of a Pardon, and undertaking to give Evidence against *particular Persons*; the latter, he thought, *disabled* the Witness, because he swore against another Man to save his own Life. It is said, indeed, that the greater Number of Judges were of a contrary Opinion; and true it is, that they did not think that the Objection went to the *Competency* of the Witness, or hindered the Court from *hearing* his Evidence; but they were all of Opinion, that the Objection was so strong against the *Credibility* of the Witness, that they unanimously advised that no such Evidence should be made use of. This appears plainly to have been the Case by * *Keyling*'s *Reports*; where, after Mention made of Sir *Mathew Hale*'s Opinion, it follows, " *Other Judges did not think*
" *the Promise of Pardon disabled him from giving his*
" *Evidence: But they all advised, that no such Pro-*
" *mise should be made, or any Threatnings used to*
" *them, in Case they did not give full Evidence.*

It is plain, from the Opinion of the Judges, that they thought all Bargains for *such or such particular Evidence*, or *for full Evidence*, were illegal; and so the Law has been since taken to be. Serjeant

 Hawkins

† *Hale* and *Brown*. * P. 18.

† *Hawkins*, in his Treatiſe of the Pleas of the Crown, has thus expreſſed himſelf: "*It hath been* "*ruled to be no good Exception, that the Witneſs hath* "*the Promiſe of a Pardon or other Reward, on Con-* "*dition of giving his Evidence, unleſs ſuch Reward* "*be promiſed by way of Contract for giving ſuch and* "*ſuch particular Evidence, or full Evidence, or any* "*Way in the leaſt to biaſs him to go beyond the* "*Truth: Which not being eaſily avoided in Promiſes* "*or Threats of this kind, it is certain that too great* "*Caution cannot be uſed in making them.* Upon the Whole then, if a Promiſe of Pardon for giving his Evidence does not diſable a Witneſs; by *his Evidence* is to be underſtood *Evidence of what he knows*, whether it makes for or againſt the Priſoner; the Promiſe therefore muſt be abſolute and not *conditional*; there muſt be no Bargain what Sort of Evidence is to be given, no Contract for *ſuch* or *ſuch* particular Evidence, or for *full* Evidence; ſuch a Bargain made with a Witneſs, would amount to a Subornation of Evidence; and the Law would not only reject the Witneſs, but puniſh him and thoſe who made ſuch an iniquitous Bargain with him.

Let us ſee now, what Witneſſes, and how qualified, are to be produced under the Proviſions of this Bill.

1. Theſe Witneſſes are induced to give Evidence againſt a certain Perſon named to them, by the Promiſe of a Pardon; (that is) they are ſuch Witneſſes as one of the wiſeſt and beſt Judges of this Country thought to be *incompetent*, and ſuch as all the Judges, upon the Conſultation before mention'd, adviſed ſhould not be made uſe of even againſt Traytors.

2. This Promiſe of Pardon is upon a very extraordinary Condition: The Promiſe is made, not for

† Vol. II. p. 437.

for diſcovering Frauds and Crimes in general, and all Perſons guilty of them; but the Condition is, that the Crimes diſcovered affect one certain Perſon named to them, and againſt whom no Charge is brought. Of ſuch a Proceeding, neither the Law of this Country, nor of any other, can ſhew an Example. Even the Statutes made to detect Highwaymen, Houſe-breakers, Clippers and Coyners have not gone this Length. They pardon Accomplices in order to obtain a Diſcovery; but they do not give the Pardon upon Condition that they accuſe *A.* or *B.* The Witneſſes are left to diſcover the Perſons guilty, but not directed whom to impeach.

3. Suppoſe this Condition complied with, and the Perſon named to them charged by their Evidence; they ſhould be then, at leaſt one would think, intituled to the Pardon; but they are not; for whether the Pardon ſhall be effectual or not, depends ſtill on a further Condition, for the laſt Clauſe in the Bill takes away the Pardon from ſuch Perſons, "*who being examined ſhall give* "*falſe Evidence, or make any falſe Diſcovery touch-*"*ing or concerning the ſaid Enquiry and relative* "*thereunto.*

At firſt Sight this ſeems to be a very fair Condition, for what can be more reaſonable then to require true Evidence and a true Diſcovery: But conſider this in its Conſequences, and then judge how fair this Condition is.

1. Firſt then, who is the Judge when the Pardon is forfeited? Naturally thoſe empowered to take the Examination are Judges of the Behaviour and Sincerity of the Witneſſes, and then the Committee or the Houſe of Commons is the Judge, (or at leaſt one of the Judges) whether the Pardon be forfeited or not. I have too much Honour for the Gentlemen of the Houſe of Commons to ſuſ-

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pect they would make an undue Uſe of this Power, and preſs Witneſſes with the Fear of loſing the Benefit of the Pardon: But I very much ſuſpect, that the Witneſſes themſelves will be apt to think, that the ſureſt Way to ſecure themſelves, will be to make their Evidence as full as they can againſt the Earl of *O*——. A Witneſs may know or probably ſuſpect, that others will be examined to the ſame Facts that he is; ſhould they make a further Diſcovery than he does, he may apprehend that it will bring him under a ſtrong Suſpicion of not having made a true Diſcovery. How then will this work? Will it not incline him to go the utmoſt Length to depoſe all he knows and all he believes, that he may be within the Terms on which the Pardon is granted; *which is granted to thoſe and thoſe only who ſhall truly and faithfully diſcover and diſcloſe to the beſt of his, her or their Knowledge, Remembrance and Belief.* Is this a proper Biaſs to be put upon Witneſſes in order to come at Truth and Juſtice? Does it not come very near to a Condition, that *they ſhall give full Evidence:* A Condition before ſhewed to be illegal, and which by the Law of *England* renders a Witneſs *incompetent.*

3. As the Enquiry is in order to a Tryal of the Earl of *O*——, for ſuch Crimes and Miſdemeanors as ſhall be diſcovered; let us ſee what Effect this Condition annexed to the Pardon, will have in that Caſe.

It is the undoubted Right of every Man, who is brought to a Tryal, whatſoever the Crimes charged on him are, to hear the Evidence of the Witneſſes produced againſt him, and to croſs examine them; and all Practices, Promiſes or Threats, which prevent him from having true Anſwers from the Witneſſes, to ſuch Queſtions as he ſhall properly ask them, are illegal, and highly injurious

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to that Right which the Law has given to every *Engliſhman* for his juſt Defence.

Suppoſe now a Witneſs, who had made a Depoſition before the Committee of the Houſe of Commons, ſhould be brought to give his Evidence again at a Tryal at the Bar of the Houſe of Lords. The Earl of *O*—— will have undeniably a right to croſs examine him, and to have true Anſwers to all proper Queſtions.

But could he hope for ſuch Anſwers in the preſent Circumſtances of the Witneſs? Conſider, the Witneſs has been examined before the Committee of the Houſe of Commons; if the Evidence at the Bar of the Lords varies from his Evidence before the Committee, one of them, without doubt is *untrue Evidence*, and then his Pardon is forfeited. To prevent this Miſchief to himſelf, it is abſolutely neceſſary for him to ſtick cloſe to his firſt Evidence, and to anſwer all Queſtions put to him, ſo as to make his Anſwer conſiſtent with the Evidence he had before given. Will it now be to any Purpoſe for the Earl of *O*—— to have ſuch a Witneſs croſs examined, or to ask him any Queſtions, when he may be morally aſſured, that the more Queſtions are asked, the ſtronger would the Evidence be againſt him; the Witneſs being under a Neceſſity to ſtrengthen and ſupport his firſt Evidence in every Anſwer he makes. You ſee now the general State of this Bill: Here is an Enquiry after a Criminal; but no Crime known or alledged; and yet a certain Perſon named, againſt whom Witneſſes are invited to appear: They are tempted with a Promiſe of Indemnity for their own Crimes, but upon this Condition, that they diſcover and charge this Perſon as a Principal or an Accomplice in their Crimes. Should this Perſon, in conſequence of this Enquiry, be brought to a Tryal, he will

will meet theſe Witneſſes ſet, prepared and reſolute to maintain their firſt Story, however he may ſift and examine or confront them, for their own Safety and Indemnity depend on it. And thus he is in ſome Degree treated as an *Outlaw*, even before he is accuſed, by being precluded from the Uſe of thoſe Means which the Law allows to every Man for his Defence.

I have met with but one Argument in Behalf of this Bill, which pretends to bear any Relation with the Principles of the Law. It is ſaid to be an uncontroverted Maxim of the Law of *England*, " *that the Publick has a Right to every Man's Evidence*; " and yet by the ſame Law, *no Man is obliged to* " *accuſe himſelf.*

And from hence the Inference is, " *that this Bill* " *ought to have paſſed in order to preſerve the Rights* " *of the Publick, and the Rights of the Individuals.* This is very pompous, but has very little Meaning: For the Publick has no more Right to every Man's, or to any Man's Evidence, than I have, or any other Subject. Every Man has a Right to every Man's Evidence, according to Law, and the Publick has no more.

The ſecond Maxim ſhews, that the firſt is miſtaken; for if no Man is to accuſe himſelf, the Publick has no Right to oblige any Man to do it, and conſequently, in ſuch Caſe, has no Right to that Man's Evidence. One who is proſecuted by the King, or the Publick, has the ſame legal Exceptions to the King's Witneſſes, as he would have to Witneſſes produced in a private Cauſe, and may repell them by proper Exceptions. The Right of the Publick therefore is juſt the ſame Right that every Subject has; that is, to have every Man's Evidence ſo far as the Law allows, and no further.

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The Bill therefore would not have preſerved this Right of the Publick, for the Publick had no ſuch Right to be *preſerved*; but it would have over-ruled and injured the Right of Individuals; and without giving them an adequate Recompence for the Right taken from them. The Act, indeed, ſecures them againſt Penalties for the Crimes they ſhall diſcover; but is that enough? The Reaſon why the Law will not oblige a Man to accuſe himſelf of Crimes, is out of Regard to his Credit and Reputation, as well as to the Penalty he may incurr; and what Proviſion is there for this in the Bill, or what can there be? Will any Act of Parliament make one think him an honeſt Man who proves himſelf to be a Knave; he muſt have but a mean Opinion of the Law of his Country, who thinks the Principles and Maxims of it to be ſo directly contrary to one another, as to want the Interpoſition of the Legiſlature, at every Turn to reconcile them.

But if this be indeed the Caſe, why was not a general Act propoſed to reconcile this Difference once for all? We ought to have a conſiſtent Law, and if it is neceſſary to make it conſiſtent in one Caſe, why not in all? But had this been attempted, every Man would have been ſenſible that ſuch a Bill, far from mending the Law, would have been deſtructive to his Rights and Liberties.

How far the Author of * *a certain Paper* would carry this ſuppoſed Right of the Publick, to procure Evidence by Force of an Act of Parliament made on Purpoſe, I cannot ſay; but there is a Paſſage in the next Paragraph, which ſhews, at leaſt, that he is not yet determined where to ſtop: For he compares the Power, which the King has to bring Criminals to Juſtice, *by Evidence*, and the

* The Proteſt.

Right the People have, by the Power of Parliament, *to come at Evidence.*

The King, he ſays, may bring Criminals to Juſtice, by Evidence *known to and within the Reach of the Laws.*

The People, in an Enquiry after Crimes which may affect the Being of the Whole, have a Right, he ſays, *to come at ſuch Evidence as may make that Enquiry effectual to their future Security.*

It is manifeſt, by the Diſtinction here made between the Evidence the King may uſe, [which is deſcribed to be legal Evidence and known to the Law] and the Evidence the *People* have a Right to on an *Enquiry*, that he claims a Right in the People to uſe Evidence *unknown to the Law of* England.

This Way of Reaſoning in the Defence of this Bill, is a plain Admittance, that the Bill was intended to ſet up a new Sort of Evidence, in the preſent Caſe, *unknown to the Law*; and this too, to carry on an *Enquiry* only, before any Crime proved or even alledged; ſo that every Subject, if ſuſpected of Crimes, which endanger the Whole (and all Treaſons do) whether juſtly ſuſpected or not, forfeits the Benefit of the Law, and is to be purſued and made a Criminal by a new Sort of Evidence, of what Sort nobody can tell; for all that is to be learnt of it, is this, it is to be Evidence unknown to the Law; and ſuch, as may *make the Enquiry effectual to the Peoples future Security.*

This laſt Circumſtance is quite terrible: What, muſt ſuch Evidence be procured by the Legiſlature as ſhall make the *Enquiry effectual*, &c. ? Suppoſe the People ſhould think the *Enquiry* not made effectual, till Evidence ſufficient is procured to convict the Perſon of the Crimes of which they ſuſpect him to be guilty; muſt ſuch Evidence, in all Events,

Events, be procured by Authority of Parliament? and have the People a Right to the Exertion of the Power of the Legiſlature, to come at ſuch Evidence? God forbid.

Since then, the Method of Proceeding introduced by this Bill, appears for the Reaſons given, to be inconſiſtent in the general View, with the Maxims of natural Juſtice, and contrary to the Spirit and Genius of the Law of *England*; let us enquire,

2. Whether the particular Circumſtances in the Caſe to which it is applied, were ſufficient to juſtify ſo extraordinary a Procceding. The only Difference that can be imagined between the Caſe of the Earl of *O*—— and that of any other Subject, muſt ariſe either, from his having been a Miniſter of the Crown, or, from his particular Conduct and Behaviour during his Miniſtry.

According to this Diviſion two Queſtions ariſe;

1. Whether it would be reaſonable to ſubject *all Miniſters* to ſuch a Proceeding.

2. Whether the particular Circumſtances and Conduct of Lord *O*——, make it reaſonable *in his Caſe*.

The firſt Queſtion will probably appear to others, as it does to me, to be a very extraordinary one: For what Reaſon can be aſſigned, why a Perſon, advanced to the higheſt Station of Honour and Dignity, and truſted by the Conſtitution with the Defence of the Rights and Liberties of others, ſhould immediately forfeit his own, and loſe the Protection of the Law of his Country?

But there is ſuch a Zeal gone out againſt Miniſters, that ſome have thought the Proceeding a very proper one to be put in Execution *againſt all Miniſters*; and it is ſaid to *be ſo juſt*, * *That no Innocent Man would deſire to avoid it*; *and no guilty one*

* V. The Proteſt.

ought to eſcape it. Strong Affirmations, without the Support of any Reaſons, are liable to be cruſhed by their own Weight; and let every Man judge whether this Aſſertion be of that Kind, as to want no Reaſons to ſupport it: It is ſent Abroad without any.

There is but one Perſon in this Kingdom exempted from all Penalties of the Law; and leaſt this Privilege ſhould turn to the Injury of the Subject, the Law conſiders his Acts, done contrary to the Direction of the Law, as void and null; conſequently thoſe who are the immediate Inſtruments, become liable to the Puniſhment of the Law.

The Law ſaith, *The King cannot do Wrong*; becauſe it makes that Act which is againſt Law, to be none of his. But if the Subject ſuffers a Wrong by any Act of the Crown, the immediate Inſtrument muſt in ſuch Caſe repair the Damage.

As great Miniſters are entruſted with the Exerciſe of the Power of the Crown, and are accountable to the Publick for any wrong Uſe made of it; 'tis natural, 'tis conſtitutional for the Repreſentatives of the People to keep a watchful Eye over them, and to ſee, *ne quid detrimenti reſpublica capiat.*

But ſtill, *if no Wrong is done*, they have no Right to complain; much leſs have they a Right, in order to purſue and proſecute *mere Suſpicions*, to treat Miniſters as if they had no Title to Juſtice or Law, in common with other Subjects.

Upon what Foot Miniſters in general are treated by Writers of a low Form, every Body knows; and nobody need wonder,

Since a Paper, pretending to be of high Extraction, has, in ſome Sort, ſet them upon a Level with Highwaymen and Houſe-breakers, by alledging in Juſtification of this Bill, the Act of the 5th

of

of Queen *Anne*, for the Diſcovery and Conviction of *Burglars* and *Felons*.

If publick Miniſters ought to be extirpated out of this Country, as the Law means to extirpate Burglars and Felons; the ſame Laws which are made againſt the latter, ſhould be made alſo againſt the former. But if the great Offices under the Crown are neceſſary to this Conſtitution, to carry on the Affairs of the Publick, and for the well governing the People; if they are exerciſed (as uſually they are) by Perſons of the higheſt Dignity, Honour and Ability; however liable Miniſters are to miſtake, however ſubject to Puniſhment when they *do wrong*; yet, I ſhould hope, the great Difference in the two Caſes may exempt them from ſuch Methods of Proſecution, as Neceſſity alone introduced, and can alone juſtify againſt Highwaymen and Houſe-breakers.

But tho' the Heat of Contention has in this Caſe, as it does in moſt, produced ſome ſtrange Notions; yet no Man that thinks ſeriouſly, would deſire to ſee ſuch a Method of Proceeding eſtabliſhed againſt all Miniſters without Diſtinction.

It remains then to be conſidered, whether the particular Circumſtances and Conduct of Lord *O*——, made this Proceeding reaſonable in his Caſe.

As there is no particular Charge againſt him, the Bill cannot be juſtified by any Act done by him; for no Act of his is ſo much as alledged to be illegal or Criminal.

All that the Bill pretends to, is an *Enquiry*.

The Queſtion then is reduced to this, What particular Circumſtances in his Caſe, can juſtify the *Method* of *Enquiry* introduced by this Bill.

All that I have heard upon this Subject, amounts to this; That the Complaints againſt Lord *O*——'s Adminiſtration,

Adminiſtration, are great and general— The Diſſatisfaction of the People, univerſal— in a Word, *That the Voice of the Nation calls aloud for an Enquiry.* Be it ſo, and let there be an Enquiry. But have the People a Right to deſire that the Law ſhould be altered, to make the Enquiry anſwer their *Expectation?* Or ſhould they deſire it, would that be a good Reaſon for granting it? Is it a proper Step in order to a *fair* Enquiry, to diſable the Perſon ſuſpected from making his juſt Defence? Is it not tying a Man's Hands behind him, and then calling him to the Combat?

But great Concern is ſhewed, that the People may not be *diſappointed* in their Expectations; in their Call for an *Enquiry*; in their Call for Juſtice.

It is ſhocking to hear ſuch Arguments for the Bill; and to hear them from thoſe who would be thought Friends to the Laws and Liberties of their Country. Are the Meaſures of Law and Juſtice to be taken from the Expectations of the People? or is the Life, Fortune or Liberty of the meaneſt Subject, to be made a Sacrifice to a *Popular Call* for Juſtice? What does this Argument amount to? Is it not plainly ſaying, as the Law ſtands, we cannot come at this ſuſpected Perſon; therefore let the Law be altered; let us invite and encourage all to accuſe him, that he may be guilty, and the People ſatisfied.

I will take it for granted, without aſking any Man's Leave, that a general Suſpicion may poſſibly be groundleſs, that a general Clamour may prevail againſt an Innocent and honeſt Miniſter. Such Caſes have been; we have ſeen ſuch in our Days: Thoſe who ſucceed us will probably ſee them too.

If this be the Caſe, that a general Suſpicion may be true, or may be falſe, it is unreaſonable to form any

any Judgment upon Suſpicion only; more unreaſonable ſtill to make a new Law for a particular Perſon, becauſe he is ſuſpected. For a new Law for his Caſe, muſt be founded on ſome Judgment made in his Caſe; and for ſuch Judgment, *Suſpicion* is no Foundation.

This ſhews the Nature of the Bill: It is in Truth, *forejudging* the Earl of *O*——. He is ſuſpected; *you enquire*; very well; but why do you judge of his Caſe, and make a new Law for his Caſe, before you have made the Enquiry? before you can tell, whether the *Suſpicion* be well founded, or not?

Poſſibly, after all, if the Facts were fully examined, theſe Jealouſies, theſe general Suſpicions may not be owing to the Conduct of the Earl of *O*——.

Artful Men can, and often do raiſe Suſpicions againſt Perſons who give them no juſt Grounds for ſo doing. It ought, at leaſt, to have been the firſt Enquiry, to know how theſe Suſpicions have been raiſed. The *Calls* for *Juſtice*, which came in great Numbers out of the Country, are not a certain Evidence, even of the Senſe of the Country. Poſſibly, they were ſent down to the Country, to be returned to thoſe, who knew how to make Uſe of them. This is no new Invention; one of the Heathen Emperors began a Perſecution by this little Piece of Craft:—*Subornatis legationibus civitatum, quæ peterent ne infra civitates ſuas Chriſtianis conventicula extruere liceret, ut quaſi coactus & impulſus facere videretur, quod erat ſponte facturus.*

But admitting the Suſpicions to carry ſome Probability with them, which is a great Conceſſion; yet why is the Law to be altered to come at the Proof of theſe Suſpicions?

It

It is a very wrong Notion of the Law of a *free* Country, to think that the only or principal View of the Law, is to puniſh Offenders. The main End of the Law of a *free* People, is to protect the Lives and Fortunes of the Subjects, againſt the Power of great Men, the Arts of little Men, and the Suſpicions of all Men. Let a Proſecution be ſet on Foot, by the Influence of a great Miniſter, or the Cunning of a little Attorney, or by general Clamour and Suſpicion;

In every Caſe, the Law is your Defence. Let others do what they will, and think what they will, in the Eye of the Law you are innocent, till proved guilty; and therefore, till Conviction, no Advantage or Benefit, which the Law allows, can be taken from you: Now if the Law was indeed provided to protect the Subject in the Caſes before mentioned, how contrary to the Conſtitution of a free Country muſt it be, to deprive a Man of any Right he has by Law, becauſe he is ſuſpected? Which is, in Truth, taking away the Right of Defence, merely becauſe there is Occaſion to make Uſe of it.

It has been ſaid, that to deny the Aſſiſtance of the Legiſlature, for the effectual carrying on Enquiries of this Nature, *may prove of fatal Conſequence to the Conſtitution, whenever the Nation ſhall be viſited by a wicked Miniſter.*

I am very ſenſible, that Offenders of all Times do often eſcape Puniſhment, by a little Art in concealing their Crimes, ſo as to keep them out of the Way of direct Proof; and a little Art in managing the Pleas and Exceptions allowed by Law. But this Evil, great as it is, is the *conſtitutional* Diſtemper of all free Governments; and you cannot cure the Diſeaſe, without deſtroying the

the Patient. If you like a Free Government, you muſt take it with all its Faults.

If you would diſtinguiſh all great Officers and Miniſters of the Crown, and put them under a Law, which you like not for yourſelf, and the reſt of your Fellow Subjects; I am afraid the Conſequences of taking away the Benefit of the Law from great Men would be, that little ones would not enjoy it long after them. Great Men, who ought to be Guardians of the Laws, would grow unconcerned for thoſe Rights and Liberties, in which they were allowed no Share, and would be ready to take from others, what others had taken from them. I know no Inſtance of a Government where the great Men were Slaves, and the little ones free. As long as all enjoy the ſame Liberties, all will unite to ſupport them. And tho' great Men may ſometimes eſcape the Puniſhment they deſerve, by the Lenity of the Laws of a Free Government; yet this Advantage, at leaſt, will ariſe from it, That all Miniſters will have an Intereſt in preſerving the Laws, which help to preſerve them from being overborn by the Complaints and Jealouſies of the People; which are apt to ariſe in all Governments, but with the greateſt Reſentment and Violence in Free Countries.

Though the Reaſons already given do ſufficiently juſtify the Lords in rejecting the Bill; yet they had other and very weighty Reaſons. Let us ſee then in the next Place,

Whether the Houſe of Lords, conſiſtently with their own Honour and Dignity, and the great Truſt repoſed in them by the Conſtitution, as Part of the Legiſlature, and as the Supreme Court of Judicature, could give their Conſent to this Bill.

The Commons had proceeded a good Way in their Enquiry, before they ſent this Bill to the Lords for their Concurrence; and they had taken ſome Steps which the Lords could not approve: And though the Lords may and ſometimes do, for the Sake of the Publick, paſs over Encroachments of Power by the Houſe of Commons; yet they never can be ſo inſenſible of their own Honour, as to give Countenance to them by a Law of their own making.

The Commons had examined ſeveral Perſons, in the *moſt ſolemn Manner*, as the Phraſe is, that is, upon Oath adminiſtred by a Juſtice of Peace: They had too committed one to Priſon, for not anſwering Queſtions put to him, though he inſiſted on his Right by Law not to anſwer Queſtions that might oblige him to accuſe himſelf.

In this State of Things the Bill was ſent to the Lords. All the World knew, (and the Lords could not be ignorant) what Powers the Commons had exerciſed, without asking the Lords Conſent, by any Bill ſent to them; and had the Lords paſſed this Bill, to give them further Powers, it would have been conſtrued to be an Acknowledgment of the Powers already aſſumed.

In the Bill of Indemnity for Sir *Thomas Cook*, there was an expreſs Clauſe to impower the Houſe of Commons to give an Oath; which was, on the Part of the Lords, a clear Aſſertion of their Right to examine on Oath; and on the Part of the Commons, a clear Conceſſion that they had no ſuch Right. In the preſent Caſe, *this Right* was aſſumed, and yet they expected further Aſſiſtance from the Lords to carry on an Enquiry which they had begun, in a Method which the Lords could not but think injurious to their Privileges. Had the

the Lords remonſtrated againſt this Proceeding, it would ſoon have grown into a Quarrel between the two Houſes; the Lords would have been repreſented as contriving Obſtructions to the Enquiry, as patronizing all the ill Conduct and Corruption ſo much talked of. With reſpect therefore to the Publick, and to their own Honour, they had no Way left, but to reject the Bill, and leave the Commons to purſue the Enquiry by ſuch Powers as the Conſtitution gave them; which avoided the Diſputes which any other Method would have produced.

The other Inſtance of Power exerciſed by the Commons, very much deſerved the Attention of the Lords, as it nearly affected the Rights and Liberties of the Subject.

The Bill ſent up by the Commons is founded on this known Principle of the Law of *England*, *That no Man is obliged to accuſe himſelf*; for which Reaſon an Indemnity is propoſed for all Crimes the Witneſſes ſhall diſcover, as far as they relate to themſelves. But at the ſame Time the Bill was before the Lords, there was a Perſon confined to cloſe Priſon for not anſwering Queſtions which tended to make him accuſe himſelf. By what Law was this Perſon impriſoned? If the Law gave him a Right to be ſilent, whence was the Power derived that puniſhed his Silence? Not from the Law certainly.

In this Situation of Things could the Lords join in an Offer of Pardon to Witneſſes, without asking by what Authority they were then under Puniſhment? Could they by their Silence make a Sacrifice of the Law of their Country, and the Rights and Liberties of their Fellow Subjects? Or could it be expected they ſhould give their Conſent

to the Indemnity propoſed to the Witneſſes, which had never been asked to their Puniſhment? Or could they do it, without being underſtood by all the World to approve the Methods already taken.

The Lords, in this Caſe, had no Choice left, but either to expoſtulate with the Commons for their Proceedings, to the Obſtruction of publick Buſineſs, at a Time when Affairs at Home and Abroad required their utmoſt Attention and Unanimity; or to leave them to purſue their own Methods, but without giving them Aſſiſtance by a Bill of ſo extraordinary a Nature.

The Commons, as Repreſentatives of the People, claim to be the great Conſervators of their Liberties: But I refer it to any Man of Senſe to determine, upon the View of theſe Proceedings, to which Houſe the People of *England* have been moſt obliged, in the preſent Caſe, for maintaining their Rights and Liberties.

Beſides theſe Reaſons which concerned the Lords, as Part of the Legiſlature, they had others to conſider as they are a Court of Judicature. The Enquiry in the Houſe of Commons, and this Bill in Conſequence of it, took their Riſe from the general Complaints and Suſpicions of the People. Allow theſe Complaints and Suſpicions to be a juſt Reaſon for the Commons, who are Proſecutors of publick Crimes, to enquire into the Truth of the Crimes ſuſpected; yet would it be in neither Houſe a juſt Ground for puniſhing or ſetting a Mark of Diſgrace upon the Perſon ſuſpected, before any Crime or Miſdemeanor proved. In the Houſe of Lords ſuch a Proceeding would have been abſurd and quite out of Character. It is not conſiſtent with common Senſe for Judges to puniſh

before

before they hear and examine, and have weighed the Merits of the Cauſe and Perſon.

It will be ſaid perhaps the Bill laid no Penalty on Lord *O*——. Is it then no Penalty to be ſingled out *by Name* in an Act of Parliament as a great *Criminal?* If the Bill did not conſider him as a *Criminal*, why did it call for the *Accomplices* of his *Crimes* to be Evidence againſt him? Why did it tempt them with a Promiſe of Indemnity to themſelves, provided they accuſed him? Would the Parliament treat one in this Manner whom they thought innocent? If not, it is plain they judged him guilty whom in this Manner they treated; and would a Court of Judicature come into ſuch Judgment before Tryal, nay, before Accuſation?

Suppoſe but for a Moment, that News was brought you, that there was a Bill in Parliament going on againſt you by *Name*, which invited all Men to give Evidence of all Crimes you had ever committed; would you not ſay, *What have I done to deſerve this Treatment?*

The asking of which Queſtion ſhews, that natural Senſe tells every Man, that ſuch a Bill ought not to paſs but againſt a notorious Criminal; and had the Lords paſſed the Bill, all the World would have underſtood it as a Declaration of their Judgment, that the Perſon named in the Bill was a notorious Offender; and indeed, it would have been adding the Authority of the Houſe of Lords to all the popular Rumours; a Confirmation of the Suſpicions of the People; and what is worſe, an Anticipation of the Judgment they were to give as a Court of Juſtice.

The Lords might have tried this Perſon afterwards, but it would have been a Solemnity carried

on

on with an ill Grace, after such a Judgment given upon the Case beforehand.

It is incumbent on every Court to see that the Person brought before them, has all the Aid the Law allows him for his Defence. One undoubted Right he has, is to cross examine Witnesses: And if it was known to any Court, that a Witness had resolved to give no Answers, or no true ones on a Cross Examination, he would be set aside entirely, and not suffered to give any Evidence at all.

The Bill would have taken away this Right, or the Benefit of it, for Reasons already mention'd, and which need not be repeated; and could this Supreme Court of Justice, consistently with their own Honour and Dignity, take away this necessary Means of Defence, from a Person against whom they had received no Charge?

Suppose the Bill had passed, and been followed by an Impeachment, and that at the Tryal Lord *O*—— had excepted against the Witnesses, as not being at Liberty to answer his Questions, inasmuch as they were bound under the Penalty of forfeiting the Indemnity, to adhere to their Evidence given before the Committee: Would not this have been a reasonable and a legal Objection? What must the Lords have done? Reject the Witnesses? No; they had themselves put the Witnesses under that Condition, by consenting to the Bill. Where then had been the Subjects Right to have impartial Witnesses, free to answer as well for as against the Person under Prosecution?

The Bill would have disabled not only the Person accused from making his just Defence; but it would likewise have disabled the House of Lords in the Exercise of their own Judicature.

A Court of Juſtice has ſomething more to do than merely to hear Witneſſes repeat their Story: They are to call upon them to explain their Evidence, where it is dark or imperfect; and where Witneſſes differ to examine them cloſely, and, if need be, ſeparately, to come at the Truth; to obſerve their Behaviour, their Conſiſtency in their Evidence, which may, and often is put to the Proof by proper Queſtions. But can any Thing of this be done, where Witneſſes come bound under Penalties to maintain the Evidence they had before given in another Place?

In Sir *Thomas Cook*'s Caſe, the Bill of Indemnity ſent from the Lords, appointed the Examination to be at the Bar of the Houſe of Lords. The Commons objected to it; and it came to a Compromiſe to have the Examination before a joint Committee of both Houſes? So careful were the Lords not to ſuffer Witneſſes to be tyed down by an Examination on Oath in another Place, without the Preſence of the Lords by themſelves or their Committee. By the Bill, now under Conſideration, the Commons might, and undoubtedly would have examined by themſelves.

In a Word, had the Lords paſſed the Bill, they muſt have ſubmitted and conſented to all the previous Steps taken by the Commons, however contrary they appeared to the Dignity of their own Houſe, or the Liberty of the Subject. They muſt have prejudged the Caſe of Lord *O*———, and by their Authority given Weight and Credit to all the popular Reports and Suſpicions before Tryal and Examination. They muſt have diſabled Lord *O* —— from making Uſe of the Means allowed him by Law in his own Defence. They muſt have diſabled themſelves, in a great Meaſure at leaſt,

leaſt, from diſcharging the great Truſt repoſed in them, as the Supreme Court of Judicature.

The only Queſtion now remaining is; Whether this Bill is juſtified by the Precedents alledged in Favour of it.

The Precedents alledged are, the Caſes of Sir *Thomas Cook*, the *Maſters* in *Chancery*, Sir *Robert Sutton*, *Thompſon*, and others.

I will not enter into the Circumſtances of theſe Caſes, with Hopes of engaging the Reader's Attention, to Stories forgotten by moſt, and in which few have any Concern. Beſides, if the Reaſons given againſt this Bill have that Weight in them, which they appear to me to have, the Argument from Precedents comes too late; for no Precedent can juſtify a Proceeding inconſiſtent with the common Rules of natural Juſtice, the Law of the Land, and the Conſtitution of the Country.

I ſhall therefore only mention ſome particular Differences between this Bill and all others, and leave the Reader to compare the Caſes more minutely at his Leiſure.

1. In this Bill there is no *Conſtat* of any Crime committed: The Enquiry is at large, not for the Author of a *certain known Crime*; but after the *unknown* Crimes of a *certain* Perſon.

In other Caſes, it was not ſo. Sir *Thomas Cook* was charged with a great Sum of Money unaccounted for, and which he had *refuſed* to account for, though *called* upon ſo to do; This was a plain Fact and Miſdemeanor.

In the Caſe of *the Maſters in Chancery*, the Monies of Widows and Orphans, paid into the Court were embezzeled, and a very great Sum wanting; which was a Breach of Truſt of the higheſt Nature. That the Fact was ſo, was not denied. The

The Caſe of *the Charitable Corporation* was, *mutatis mutandis*, juſt the ſame.

The Directors or Truſtees of the Company had abuſed their Truſt; many Families were actually ruined. The Crime was but too apparent.

In all theſe Caſes the Crime was certain; and the Enquiry was, not to *find* a *Crime*, but to find the Author: A proper and legal Proceeding.

2. This Bill is an Invitation to all Perſons to bring *any* Accuſation againſt *one* Perſon *named* to them. No Fact, no Crime ſpecified to which they are to apply their Evidence; but a Perſon is named, and *any* Evidence, if it be againſt him, is ſought after.

In the other Caſes, the Witneſſes were not called upon to accuſe a Perſon named to them for *any*, or *all* the Evil he ever did; but to make Proof of Facts certainly alledged.

In Sir *Thomas Cook*'s Caſe, the Fact was plain, he had the Money, had refuſed to account, no Evidence was required but of the Diſpoſal of the Money; without naming any Perſon to be accuſed of receiving it.

In the Caſe of the Maſters in Chancery, the Fact was clear; the Money gone:

The only Evidence required, was to ſhew what became of the Money; and by whoſe Fault the Deficiency happened?

In the Caſe of the Charitable Corporation it was juſt the ſame: The Fact undeniable; the Proprietors ruined; The only Queſtion, By whoſe Means?

3. In this Bill, the Indemnity to the Witneſſes is limited to ſuch Things as they ſhall diſcover *touching the Enquiry* (into the Conduct of the E—

of O——) and *relative thereunto*; ſo that if their Evidence affects not *him*, it will not ſave them.

4. The Pardon is conditional likewiſe. If it ſhould be judged that they made a falſe Diſcovery, *&c.* the Pardon is forfeited. How this Condition would operate, has been already explained.

Compare then theſe Precedents, and this Bill in theſe Particulars, and judge whether they can juſtify or ſupport the Method of Proceeding, introduced by this Bill.

As to the Argument from Precedents in general, it is of great Weight in aſcertaining the Law, where the Law is founded in Cuſtom and Uſage; and therefore Precedents have great Authority in the Common Law of *England*. It is of great Weight alſo, in expounding and determining the Senſe and Meaning of written Laws; and therefore long and uniform Practice upon Statute Law, is of great Uſe to diſcover the true Meaning and Intention of Acts of Parliament: But in political Laws, made for particular Purpoſes, and relative to particular Caſes and Circumſtances, Precedents are not of equal Authority, for many Reaſons: Laws made for particular Caſes, depend on the Circumſtances of thoſe Caſes only; and as two Caſes rarely agree in all Circumſtances, a Law proper in one Caſe, may be a very improper Precedent for making the ſame Law in another. But above all, it is to be conſidered, that enormous and diſtemper'd Times have ſometimes produced very bad Precedents, and very unfit ever to be followed.

Reſentment and Indignation have a great Share in ſuch Laws; and it will be very abſurd to propoſe, what was an Effect of the Paſſion of former Ages, as a Precedent, to direct the Reaſon and

Judgment

Judgment of ſucceeding Times. Look into the Reign of *Hen.* VIII. and the Beginning of *Edw.* VI. ſee how Parliamentary Proſecutions were carried on; and ſay, whether you like the Precedents. Witneſſes and Evidence were looked on as Things of Form, and often laid aſide; and many of the firſt Quality ſuffered, without ever having an Opportunity of anſwering for themſelves.

Some other Precedents have been alledged in the preſent Caſe, ſuch as the 9th of *George* I. forbidding all Perſons to *promote an* Eaſt India *Trade in the* Auſtrian Netherlands; and the 5th of Queen *Anne*, for diſcovering *Burglars* or *Felons:* But theſe Precedents are very different from this Bill. The Laws here referred to, are *preventive* Laws, intended to diſcourage and put an End to ſome wicked or pernicious Practices for the future. But this Bill is a Law, *ex poſt facto*, to diſcover and puniſh paſt Offences. The Legiſlature, in making *preventive* Laws, act by Rules of *political* Prudence; and if, to prevent and ſtop ſome growing Evils, they make new and ſeverer Laws, every Man has Notice before-hand, to avoid the Difficulty and Severity of the Law, by avoiding the Crimes. But paſt Offences, in a free Country, do not fall under political Conſiderations, but legal ones, and muſt be tryed by the known Laws of the Conſtitution. It is dangerous to leave the Path marked out to us by the Law, and to reſort to political Reaſons in the Adminiſtration of Juſtice. Nobody can tell where ſuch Proceedings will ſtop.

It has been ſaid in Juſtification of this Bill, that the Publick has a Right to Truth, and to *all the Means of coming at it:* But to what Lengths will this reaſoning carry us? Suppoſe the Bill had

paſſed,

paſſed, and had not proved *an effectual Means* to come at the Truth; what muſt have been the next Step? In ſome Countries Racks and Tortures of all Kinds are uſed as proper Means to diſcover Truth; and they were introduced by this very Way of Reaſoning, becauſe the Publick had a Right to Truth, and to the *Means of coming at it.* I will not aſk any *Engliſhman*, how he would like to ſee *theſe Means* for diſcovering *Truth*, brought into this Country.

But I wiſh thoſe, who have a Zeal for the Liberties of their Country, would confine the Operations of it, within the Limits preſcribed by the Conſtitution.

By this Means our Home-Diviſions might be ended, or carried on without Danger to the Publick. Differences in Opinion, with reſpect to Publick Affairs, and Oppoſition of Parties, are natural to free States, and contribute, perhaps, to their Health; as Winds and Storms purge the Air, and keep it from Stagnation: But they muſt be contained within Bounds, and not ſuffered to break through the Fence of the Laws, which the Conſtitution has ſet round us, and which have in all Times been found the beſt Security of the Liberties of this Country.

FINIS.